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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,262	03/29/2004	John Palker	EMC-014 (EMC-04-048)	2769
60567 7590 07/16/2007 GUERIN & RODRIGUEZ, LLP 5 MT. ROYAL AVE. MARLBORO, MA 01752			EXAMINER HANSEN, JAMES ORVILLE	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 07/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/812,262

Applicant(s)

PALKER ET AL.

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2007.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 5-8, 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-11, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 21, 2007 has been entered.

#### ***Election/Restrictions***

2. Applicant's previous election with traverse of Group IV in the reply filed on April 24, 2006 is acknowledged. It is noted that applicant has argued that withdrawn claims 12 & 13 are directed towards the elected invention since neither of the claims "includes such a side rail portion" as was the case in "the non-elected embodiment of claims 5-8". This line of argument is not found persuasive because the claims appear to read on the non-elected species of Groups II or III for example since these embodiments depict the upper rail guide as including a plurality of upper rail guides. Since the elected embodiment does not disclose this claimed feature, the requirement is still deemed proper and maintained as FINAL.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 9-11 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid [U.S. Patent 5,626,406] in view of Powell et al., [U.S. Patent 4,440,461]. Schmid (figures 1-5) teaches of a tray (fig. 1) having a front end and a back end, comprising: a base (26) sized for supporting a unit of electronic equipment; a back wall (28) extending perpendicularly from the base at the back end of the tray; and opposing side walls (18) spatially separated by the base and extending perpendicularly therefrom, each side wall extending from the front end to the back end of the tray to abut the back wall, each side wall having a flange (110) at the front end that is capable of attaching the tray to a mounting rail of a cabinet rack, the flange extending perpendicularly to that side wall away from the base, each side wall having at least one upper rail guide (the top 106) and at least one lower rail guide (the bottom 106) integrally formed in and extending laterally from the same side of that side wall, the at least one lower rail guide being spatially separated from and opposite to the at least one upper rail guide, the upper and lower rail guides may slidably engage a portion of a side rail (16 for example) when the tray is installed in a cabinet rack. Just for claim 2 purposes, the position is now taken that the upper rail guide is (the bottom 106) and the lower rail guide is (the top 106) since the adjectives "upper and lower" do not descriptively locate the guides relative to the tray [i.e., an "upper rail guide" does not infer the same meaning as "a rail guide located on an upper edge of the side wall"], wherein the at least one upper rail guide has an upwards-facing lip (note fig. 4) and the at least one lower rail guide has a downwards-facing lip (note fig. 4); the upwards-facing and downwards-facing lips may simultaneously slid into respective grooves of a

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portion of a slide rail when the tray is installed in a cabinet rack. As to claim 3, the at least one upper rail guide and the at least one lower rail guide of each side wall has a horizontal section (note the horizontal section as depicted in fig. 4) extending laterally from that side wall, the horizontal sections opposing each other and being spatially separated such that a portion of a side rail may fit closely in between the horizontal sections. As to Claim 9, Schmid teaches applicant's inventive claimed tray as disclosed above, but does not show the tray as being a "single-piece" construction. However, the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the tray as an integrally formed member, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). Additionally, the use of a one-piece construction instead of the structure disclosed in the prior art would be merely a matter of obvious engineering choice. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965). As to claim 10, the front end of the tray is open (fig. 1 depicts an open front end). As to claim 11, the tray further comprising a plurality of lower guide rails (the bottom 80 and the bottom 106 e.g.,) integrally formed in and extending laterally from each side wall as best understood by the examiner in view of the outstanding 112(2) rejection disclosed above, the lower guide rails of each side wall being in alignment along a length of that side wall and capable of engaging a side rail when the tray is installed in a cabinet rack. As to claim 15, each flange having an opening (note the opening occupied by element 114) through which a fastener (114) can pass to secure the front end of the tray to a mounting rail of a cabinet rack if so desired. Schmid teaches applicant's inventive claimed tray as

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disclosed above, but does not show a top edge and bottom region of each side wall as having cut away sections forming the rail guides. Powell (figures 1-26) is cited as an evidence reference to show that it was known in the art to cut away sections along the top and bottom regions of a tray sidewall for the purpose of forming rail guides in an analogous art [note figures 8-12 & 13-17 for example]. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the way by which the rail guides are produced from the side walls as taught by Powell because this arrangement would provide Schmid with a rail guide that is similar in structure and functionally the same wherein the formation of the guides by pressing is replaced by stamping. The claimed "inventive feature" concerns a slight constructional change in the prior art device that is deemed to come within the scope of the customary practice followed by persons skilled in the art, especially as the advantages thus achieved can readily be foreseen. As such, the "inventive feature" lacks an inventive step and therefore does not constitute patentable subject matter.

5. Claims 1-4, 11, 14 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harwell [U.S. Patent No. 6,142,590] in view of Tomino [US 2003/0042215] and further in view of Powell et al. Harwell (figures 1-18B) teaches of a tray (fig. 17) having a front end and a back end, comprising: a base (bottom of tray) sized for supporting a unit of electronic equipment; a back wall (rearward wall) extending perpendicularly from the base at the back end of the tray; and opposing side walls (left and right side walls) spatially separated by the base and extending perpendicularly therefrom, each side wall extending from the front end to the back end of the tray to abut the back wall, each side wall having a flange (note laterally

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projecting flanges – engaged by elements 40 & 42) at the front end that is capable of attaching the tray to a mounting rail of a cabinet rack, the flange extending perpendicularly to that side wall away from the base, each side wall having at least one upper rail guide (denoted by 192). As to claim 4, Harwell further teaches of a tab (214) projecting perpendicularly from the base of the tray and effectively partitioning the base into two sections. As to claim 14, each section is capable of receiving a separate unit of electronic equipment. As to claim 15, each flange having an opening (fig. 17) through which a fastener (40, 42) can pass to secure the front end to a mounting rail if so desired. Harwell teaches applicant's inventive claimed tray as disclosed above, but does not show at least one lower rail guide integrally formed in and extending laterally from the same side of that side wall, with the at least one lower rail guide being spatially separated from and opposite to the at least one upper rail guide, and the upper and lower rail guides being slidably engageable to a portion of a side rail when the tray is installed in a cabinet rack. Tomino (figures 1-8B) is cited as an evidence reference to show that it was known in the server tray art to provide integral upper and lower rail guides (fig. 3A) on side walls (146) of a tray (140), wherein the at least one upper rail guide has an upwards-facing lip (note fig. 3A) and the at least one lower rail guide has a downwards-facing lip (note fig. 3A), the upwards-facing and downwards-facing lips may simultaneously slid into respective grooves of a portion of a slide rail when the tray is installed in a cabinet rack. As to claim 3, the at least one upper rail guide and the at least one lower rail guide of each side wall has a horizontal section (note the horizontal section as depicted in fig. 3A) extending laterally from that side wall, the horizontal sections opposing each other and being spatially separated such that a portion of a side rail may fit closely in between the horizontal

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sections. As such, the position is put forth that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Harwell's side walls with both upper and lower rail guides as taught by Tomino because this arrangement would enhance the stability of the tray when inserted within a slide rail while enhancing the sliding motion of the tray since the load of the tray would be evenly distributed among the upper and lower rail guides. The combined prior art teach applicant's inventive claimed tray as disclosed above, but do not show a top edge and bottom region of each side wall as having cut away sections forming the rail guides. Powell (figures 1-26) is cited as an evidence reference to show that it was known in the art to cut away sections along the top and bottom regions of a tray sidewall for the purpose of forming rail guides in an analogous art [note figures 8-12 & 13-17 for example]. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the way by which the rail guides are produced from the side walls as taught by Powell because this arrangement would provide the modified prior art with a rail guide that is similar in structure and functionally the same wherein the formation of the guides by pressing is replaced by stamping. The claimed "inventive feature" concerns a slight constructional change in the prior art device that is deemed to come within the scope of the customary practice followed by persons skilled in the art, especially as the advantages thus achieved can readily be foreseen. As such, the "inventive feature" lacks an inventive step and therefore does not constitute patentable subject matter.



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***Response to Arguments***

6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. It is viewed that applicant's remarks are adequately addressed within the body of the rejections.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
July 8, 2007